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Christopher Keith

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52531

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10/08/2008

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SEATTLE, WA 98101-2347

EXAMINER

GRAHAM, CLEMENT B

ART UNIT

PAPER NUMBER

3696

MAIL DATE

DELIVERY MODE

10/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/546,031

Applicant(s)

KEITH, CHRISTOPHER

Examiner

Clement B. Graham

Art Unit

3692

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/9/08.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22, 24 and 26-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22, 24 and 26-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/IC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/9/2008 has been entered.

2. Claims 1-22, 24, 26-39 remained pending and claims 38-39 has been added.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 1, 7, 12, 27, 34 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 1, 7, 12, 27, 34 recite a method of providing a published price for a security comprising: providing, determining, notifying. Based on Supreme Court precedent, a proper process must be tied to another statutory class or transform underlying subject matter to a different state or thing (*Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780,787-88 (1876)). Since neither of these requirements is met by the claim, the method is not considered a patent eligible process under 35 U.S.C. 101. To qualify as a statutory process, the claim should positively recite the other statutory class to which it is tied, for example by identifying the apparatus that accomplished the method steps or positively

reciting the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Claims 1, 7, 12, 27, 34 are directed towards a method of providing a published price for a security comprising: providing, determining, and notifying steps and the claims are directed towards computer programs that can be interpreted as consisting of software per se, and software is not a patentable subject matter because it does not fall under a statutory class as being a process, machine, manufacture, or composition of matter.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made

6. Claims 1-22, 24, 26-39, are rejected under 35 U.S.C. 103(a) as being unpatentable over Keiser et al, U.S Patent 6, 505, 174 in view White, Jr U.S Pub: 2002/0023037.

As per claims 1, Keiser discloses a method of providing a published price for a security comprising: notifying (i. e, displays instruments”) a set of computers (i. e, plurality of client computers”) of a proposed price for buying or selling the security, and a computer. (Note abstract and see column 2 lines 57-67 and column 3 lines 1-28).

Keiser fail to explicitly teach determining whether any of the first computer program entities has offered an improved price, higher than the proposed price for buying or lower than the proposed price for selling and providing the improved price as the published price, wherein the notifying, determining and providing and are performed by a program second computer program entity executing on a computer.

However White Jr discloses typically, if an existing offer matching system determines that a particular offer is to be executed, then the participant that submitted such offer becomes legally bound to buy or to sell (as the case may be) a particular quantity of the relevant traded item for a particular price subject to predetermined terms and conditions applicable to the operation of the offer matching system. For example, if a first participant (for example a market maker) submitted to an offer matching system a first

offer to buy a large number of shares of Acme common stock for \$1.00 per share or better and a second participant (for example, a broker forwarding an offer on behalf of a client) submitted to the offer matching system a second offer to sell 100 shares of Acme common stock for \$1.00 per share or better, then the offer matching system might determine that the first offer can be executed against the second offer for 100 shares at a offer of \$1.00 per share. In such a case, the first participant would become obligated to buy 100 shares of Acme common for \$1.00 per share and the second participant would become obligated to sell 100 shares of Acme common for \$1.00 per share (see column 1 para 0007 and column 9 para 0208).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Keiser to include determining whether any of the first computer program entities has offered an improved price, higher than the proposed price for buying or lower than the proposed price for selling and providing the improved price as the published price, wherein the notifying, determining and providing and are performed by a program second computer program entity executing on a computer taught by White Jr in order to allow a participant to receive fairly complete information about offers submitted by such participant and the status of such offers and allows a customer who submits an order to a participant system to receive fairly complete information about offers submitted by such customer.

As per claims 2, Keiser discloses wherein, when there is no improved price, the proposed price is provided as the published price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 3, Keiser discloses further comprising waiting for a predetermined time interval after notifying the first computer program entities before determining whether any of the first computer program entities has offered an improved price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claim 4-5, Keiser receiving a plurality of improved prices from two or more of the entities during the predetermined interval, and selecting the best of the improved prices as the published price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 6, Keiser discloses further comprising, prior to notifying the first computer program entities of the proposed price, comparing a current book price to a most recent trade price and deciding to notify the first computer program entities of the proposed price when the current book price is different than the most recent trade price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claim 7, Keiser a method of participating in pricing of security comprising: of receiving a proposed price for a the security from a second computer program entity and a computer. (Note abstract and see column 2 lines 57-67 and column 3 lines 1-28).

Keiser fail to explicitly teach determining whether to improve upon the proposed price, and when the determination is affirmative, offering an improved price to the second computer program entity which can be provided by the second computer program entity as a published price to a third party wherein the receiving determining and offering are performed by a first computer program entity executing on a computer.

However White Jr discloses However White Jr discloses typically, if an existing offer matching system determines that a particular offer is to be executed, then the participant that submitted such offer becomes legally bound to buy or to sell (as the case may be) a particular quantity of the relevant traded item for a particular price subject to predetermined terms and conditions applicable to the operation of the offer matching system. For example, if a first participant (for example a market maker) submitted to an offer matching system a first offer to buy a large number of shares of Acme common stock for \$1.00 per share or better and a second participant (for example, a broker forwarding an offer on behalf of a client) submitted to the offer matching system a second offer to sell 100 shares of Acme common stock for \$1.00 per share or better, then the offer matching system might determine that the first offer can be executed against the second offer for 100 shares at a offer of \$1.00 per share. In such a case, the first participant would become obligated to buy 100 shares of Acme common for \$1.00 per share and the second participant would become obligated to sell 100 shares of Acme common for \$1.00 per share (see column 1 para 0007 and column 9 para 0208).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Keiser to determining whether to improve upon the proposed price, and when the determination is affirmative, offering an improved price to the second computer program entity which can be provided by the second computer program entity as a published price to a third party wherein the receiving determining and offering are performed by a first computer program entity executing on a computer taught by White Jr in order allow a participant to receive fairly complete information about offers submitted by such participant and the status of such offers and allows a customer who submits an order to a participant system to receive fairly complete information about offers submitted by such customer.

As per claim 8, Keiser discloses comprising requiring the first computer program entity to register with the second computer program entity to receive proposed prices for trading the security to receive proposed prices for trading the security. (See column 2 lines 25-35 and column 21 lines 60-65).

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As per claim 9, Keiser discloses receiving a current price at the first computer program entity a current published price from the second computer program entity is deciding whether the published price is satisfactory to complete a transaction and when the decision is that the published price is not satisfactory then registering the first computer program entity with the second computer program entity without booking an order for security . (Note abstract and see column 3 lines 15-65 and column 4 lines 5-56 and column 6 lines 45-55 and column 27 lines 10-25 and column 21 lines 60-65).

As per claims 10, Keiser wherein the determining is automatically performed in accordance with a strategy predefined in execution of the first computer program entity price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 11, Keiser discloses wherein the determining is performed in accordance with an instruction received from a controller in response to a transmission of the proposed price to the controller price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 12, Keiser discloses maintaining an order book including orders to buy or sell specified quantities of the security at respective prices, the lowest sell order price and a computer.(Note abstract and see column 2 lines 57-67 and column 3 lines 1-28).

Keiser fail to explicitly teach the booked orders being the book sell price, the highest buy order price of the booked orders being the book buy order price engaging in a price discovery procedure with a set of first computer program entities before responding to a request for a current buy or sell price of the security to produce an discovered price, and providing the discovered price as the current buy or sell price, being higher than the book buy price or lower than the book sell price wherein the maintaining engaging and providing are performed by a second computer program entity program executing on a computer.

However White Jr discloses typically, if an existing offer matching system determines that a particular offer is to be executed, then the participant that submitted such offer becomes legally bound to buy or to sell (as the case may be) a particular quantity of the relevant traded item for a particular price subject to predetermined terms and conditions applicable to the operation of the offer matching system. For example, if a first participant (for example a market maker) submitted to an offer matching system a first offer to buy a large number of shares of Acme common stock for \$1.00 per share or better and a second participant (for example, a broker forwarding an offer on behalf of a client) submitted to the offer matching system a second offer to sell 100 shares of Acme common stock for \$1.00 per share or better, then the offer matching system might determine that the first offer can be executed against the second offer for 100 shares at a offer of \$1.00 per share. In such a case, the first participant would become obligated to buy 100 shares of Acme common for \$1.00 per share and the second participant would

become obligated to sell 100 shares of Acme common for \$1.00 per share (see column 1 para 0007 and column 9 para 0208).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Keiser to include the booked orders being the book sell price, the highest buy order price of the booked orders being the book buy order price engaging in a price discovery procedure with a set of first computer program entities before responding to a request for a current buy or sell price of the security to produce an discovered price, and providing the discovered price as the current buy or sell price, being higher than the book buy price or lower than the book sell price wherein the maintaining engaging and providing are performed by a second computer program entity program executing on a computer taught by White Jr in order allow a participant to receive fairly complete information about offers submitted by such participant and the status of such offers and allows a customer who submits an order to a participant system to receive fairly complete information about offers submitted by such customer.

As per claims 13, Keiser discloses wherein the price discovery procedure includes providing the book buy or sell price to at least one entity of the first computer program entities price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 14, Keiser discloses wherein the at least one entity provides an improved price higher than the book buy price or lower than the book sell price price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 15, Keiser discloses wherein a temporal duration of the price discovery procedure is predetermined price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 16, Keiser discloses wherein a temporal duration of the price discovery procedure is based on an amount of activity occurring during the price discovery procedure price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 17, Keiser discloses wherein the first computer program entities each represent an order for the security that has not been booked price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 18, Keiser discloses wherein the first computer program entities each represent an order for the security that has not been booked price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 19, Keiser wherein the notifying determining, and providing are performed automatically without human intervention price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

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As per claims 20, Keiser further comprising requiring the first computer program entities to register with the second computer program entity to participate in the price discovery procedure price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 21, Keiser wherein the at least one entity automatically provides the improved price based on a strategy that is predetermined in execution of the at least one entity price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 22, Keiser discloses wherein the at least one entity provides the improved price based on a strategy that is predetermined in execution of the at least one entity, and wherein the strategy of the at least one computer program entity is determined independently of strategies for other first computer program entities price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 24, Keiser discloses wherein the proposed price is determined by the second computer program entity based on a booked order in an order book price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 26, Keiser wherein the proposed price is determined by the second computer program entity based on a booked order in an order book price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 27, Keiser discloses a computing system for providing a published price for a security to a plurality of market participants at a market at which trades are made with respect to the security, the system comprising:

a computing component configured to notify a set of the plurality of market participants of a proposed price for trading the security, wherein the computing component is configured to notify the set of market participants of the proposed price prior to providing the published price and wherein the proposed price is not executable at the market (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

Keiser fail to explicitly teach means for determining whether any of the first computer program entities has offered an improved price for the security, wherein the improved price is higher than the proposed price for buying or lower than the proposed price for selling, and means for providing the improved price as the published price to the plurality of market participants if an improved price has been offered wherein the market participants can execute a trade for the security at the published price.

However White Jr discloses However White Jr discloses typically, if an existing offer matching system determines that a particular offer is to be executed, then the participant that submitted such offer becomes legally bound to buy or to sell (as the case may be) a particular quantity of the relevant traded item for a particular price subject to predetermined terms and conditions applicable to the operation of the

offer matching system. For example, if a first participant (for example a market maker) submitted to an offer matching system a first offer to buy a large number of shares of Acme common stock for \$1.00 per share or better and a second participant (for example, a broker forwarding an offer on behalf of a client) submitted to the offer matching system a second offer to sell 100 shares of Acme common stock for \$1.00 per share or better, then the offer matching system might determine that the first offer can be executed against the second offer for 100 shares at a offer of \$1.00 per share. In such a case, the first participant would become obligated to buy 100 shares of Acme common for \$1.00 per share and the second participant would become obligated to sell 100 shares of Acme common for \$1.00 per share (see column 1 para 0007 and column 9 para 0208).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Keiser to include the computing component being further configured to determine whether any of the set of market participants has offered an improved price for the security, wherein the improved price is higher than the proposed price for buying or lower than the proposed price for selling, and if an improved price has been offered, then providing the improved price as the published price to the plurality of market participants, wherein the market participants can execute a trade for the security at the published price. Keiser fail to explicitly teach taught by White Jr in order to allow a participant to receive fairly complete information about offers submitted by such participant and the status of such offers and allows a customer who submits an order to a participant system to receive fairly complete information about offers submitted by such customer.

As per claims 28, Keiser discloses wherein, when there is no improved price, the computing system is configured to provide the proposed price as the published price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 29, Keiser discloses wherein the computing system is further configured to wait for a predetermined time interval after notifying the set of market participants of the proposed price before determining whether any of the set of market participants has offered an improved price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 30, Keiser discloses wherein if a plurality of improved prices is received from two or more of the market participants during the predetermined interval, the computing system is configured to provide the best of the improved prices as the published price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 31, Keiser discloses wherein the computing system is configured to provide an improved price first offered by any of the market participants as the published price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 32, Keiser discloses wherein prior to notifying the set of market participants of the proposed price, the computing system is configured to compare a current book price to a most recent trade price and decide to notify the set of market participants of the proposed price when the current book price is different than the most recent trade price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 33, Keiser discloses wherein the computing system is configured to notify, determine, and provide the published price automatically without human intervention price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 34, Keiser disclose A computer-accessible medium containing computer program instructions that, when executed, cause a computer to participate in pricing of a security by: receiving a proposed price for the security from a second computer program entity, wherein the second computer program entity is providing a market at which trades are made with respect to the security, and wherein the proposed price is not executable at the market (Note abstract and see column 2 lines 57-67 and column 3 lines 1-28).

Keiser fail to explicitly teach determining whether to improve upon the proposed price for the security by offering an improved price that is higher than the proposed price for buying or lower than the proposed price for selling, and when the determination is affirmative, offering the improved price to the second computer program entity, which improved price can be provided by the second computer program entity as a published price to a plurality of market participants at the market, the published price being executable by the market participants at the market.

However White Jr discloses However White Jr discloses typically, if an existing offer matching system determines that a particular offer is to be executed, then the participant that submitted such offer becomes legally bound to buy or to sell (as the case may be) a particular quantity of the relevant traded item for a particular price subject to predetermined terms and conditions applicable to the operation of the offer matching system. For example, if a first participant (for example a market maker) submitted to an offer matching system a first offer to buy a large number of shares of Acme common stock for \$1.00 per share or better and a second participant (for example, a broker forwarding an offer on behalf of a client) submitted to the offer matching system a second offer to sell 100 shares of Acme common stock for \$1.00 per share or better, then the offer matching system might determine that the first offer can be executed against the second offer for 100 shares at a offer of \$1.00 per share. In such a case, the first participant would become obligated to buy 100 shares of Acme common for \$1.00 per share and the second participant would become obligated to sell 100 shares of Acme common for \$1.00 per share (see column 1 para 0007 and column 9 para 0208).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Keiser to include determining whether to improve upon the proposed price for the security by offering an improved price that is higher than the proposed price for buying or lower than the proposed price for selling, and when the determination is affirmative, offering the improved price to the second computer program entity, which improved price can be provided by the second computer program entity as a published price to a plurality of market participants at the market, the published price being executable by the market participants at the market.

taught by White Jr in order to allow a participant to receive fairly complete information about offers submitted by such participant and the status of such offers and allows a customer who submits an order to a participant system to receive fairly complete information about offers submitted by such customer.

As per claims 35, Keiser discloses wherein the instructions, when executed, cause the computer to register with the second computer program entity for the purpose of receiving proposed prices for trading the security price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 36, Keiser discloses wherein the instructions, when executed, further cause the computer to receive a published price from the second computer program entity, decide whether the published price is satisfactory to complete a transaction, and when the decision is that the published price is not satisfactory, then register with the second computer program entity without booking an order for the security price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 37, Keiser discloses wherein the instructions cause the computer automatically determine whether to improve upon the proposed price in accordance with a predefined strategy price (Note abstract and column 6 lines 45-65 and column 27 lines 10-25).

As per claims 38, Keiser discloses A computing system for providing a published price for a security, wherein the published price is available to a plurality of market participants in a market to execute a trade for the security, the system comprising:

means for notifying a set of first computer program entities of a proposed price for buying or selling the security, wherein said notifying occurs prior to providing the published price, and wherein the proposed price is not executable at the market (Note abstract and see column 2 lines 57-67 and column 3 lines 1-28).

Keiser fail to explicitly teach means for determining whether any of the first computer program entities has offered an improved price for the security, wherein the improved price is higher than the proposed price for buying or lower than the proposed price for selling, and means for providing the

improved price as the published price to the plurality of market participants if an improved price has been offered wherein the market participants can execute a trade for the security at the published price.

However White Jr discloses However White Jr discloses typically, if an existing offer matching system determines that a particular offer is to be executed, then the participant that submitted such offer becomes legally bound to buy or to sell (as the case may be) a particular quantity of the relevant traded item for a particular price subject to predetermined terms and conditions applicable to the operation of the offer matching system. For example, if a first participant (for example a market maker) submitted to an offer matching system a first offer to buy a large number of shares of Acme common stock for \$1.00 per share or better and a second participant (for example, a broker forwarding an offer on behalf of a client) submitted to the offer matching system a second offer to sell 100 shares of Acme common stock for \$1.00 per share or better, then the offer matching system might determine that the first offer can be executed against the second offer for 100 shares at a offer of \$1.00 per share. In such a case, the first participant would become obligated to buy 100 shares of Acme common for \$1.00 per share and the second participant would become obligated to sell 100 shares of Acme common for \$1.00 per share (see column 1 para 0007 and column 9 para 0208).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Keiser to include teach means for determining whether any of the first computer program entities has offered an improved price for the security, wherein the improved price is higher than the proposed price for buying or lower than the proposed price for selling, and means for providing the improved price as the published price to the plurality of market participants if an improved price has been offered wherein the market participants can execute a trade for the security at the published price taught by White Jr in order to allow a participant to receive fairly complete information about offers submitted by such participant and the status of such offers and allows a customer who submits an order to a participant system to receive fairly complete information about offers submitted by such customer.

As per claims 39, Keiser discloses A computing system for setting a price for a security, comprising: means for maintaining an order book for a market at which trades are made with respect to the security, said order book including orders to buy or sell specified quantities of the security at respective prices, the lowest sell order price of the booked orders being the book sell price, the highest buy order price of the booked orders being the book buy price (Note abstract and see column 2 lines 57-67 and column 3 lines 1-28).

Keiser fail to explicitly teach means for engaging in a price discovery procedure with a set of first computer program entities before responding to a request for a current buy or sell price of the security, wherein the price discovery procedure produces a discovered price for the security, and means for

providing the discovered price as the current buy or sell price of the security to a plurality of market participants participating in the market, the discovered price being higher than the book buy price or lower than the book sell price..

However White Jr discloses typically, if an existing offer matching system determines that a particular offer is to be executed, then the participant that submitted such offer becomes legally bound to buy or to sell (as the case may be) a particular quantity of the relevant traded item for a particular price subject to predetermined terms and conditions applicable to the operation of the offer matching system. For example, if a first participant (for example a market maker) submitted to an offer matching system a first offer to buy a large number of shares of Acme common stock for \$1.00 per share or better and a second participant (for example, a broker forwarding an offer on behalf of a client) submitted to the offer matching system a second offer to sell 100 shares of Acme common stock for \$1.00 per share or better, then the offer matching system might determine that the first offer can be executed against the second offer for 100 shares at a offer of \$1.00 per share. In such a case, the first participant would become obligated to buy 100 shares of Acme common for \$1.00 per share and the second participant would become obligated to sell 100 shares of Acme common for \$1.00 per share (see column 1 para 0007 and column 9 para 0208).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Keiser to include means for engaging in a price discovery procedure with a set of first computer program entities before responding to a request for a current buy or sell price of the security, wherein the price discovery procedure produces a discovered price for the security, and means for providing the discovered price as the current buy or sell price of the security to a plurality of market participants participating in the market, the discovered price being higher than the book buy price or lower than the book sell price taught by White Jr in order to allow a participant to receive fairly complete information about offers submitted by such participant and the status of such offers and allows a customer who submits an order to a participant system to receive fairly complete information about offers submitted by such customer.

Conclusion

7. Applicant's arguments filed 9/9/08 has been fully considered but they are moot in view of new grounds of rejections.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clement B. Graham whose telephone number is 571-272-6795. The examiner can normally be reached on 7am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CG
September 26, 2008

/Kambiz Abdi/
Supervisory Patent Examiner, Art Unit 3692